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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/802,425	03/09/2001	Dean Rhoades	05309P001X	7222

8791 7590 02/26/2002

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EXAMINER

WILLIAMSON, MICHAEL A

ART UNIT	PAPER NUMBER
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1616

DATE MAILED: 02/26/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/802,425

Applicant(s)

RHOADES, DEAN

Examiner

Michael A. Williamson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on or after March 9, 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2 and 3. 6) ☐ Other: _____

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DETAILED ACTION

Pending Claims

The pending claims in the instant application are 1-20. The independent claims are 1, 5, 8, 11, 14 and 18.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over The Procter & Gamble Company (WO 99/21532).

The Procter & Gamble Company discloses a composition comprising a cream moisturizer and alumina microcrystals which are the same as corundum suspended in said cream moisturizer used to rejuvenate the human skin by buffing an area of the skin by using a sponge massaging pad and mechanical means (see Abstract, Summary of the Invention on page 3, continued through page 4, page 8, 1st and 2nd paragraphs, page

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10, 2nd full paragraph continued on page 11, page 11, 1st and 2nd paragraphs, page 30, 6th paragraph through page 31, 1st paragraph, page 41, 2nd paragraph to page 56, 3rd paragraph and page 68, 2nd full paragraph through page 69, 1st full paragraph). The Procter & Gamble Company does not disclose that the mechanical means is the head of a vibrator.

The Procter & Gamble Company does disclose that the means is mechanical and vibrators are a well known mechanical means used to scrub and/or buff surfaces including the facial area. Therefore, it would have been obvious to one of ordinary skill in the art to use the well known mechanical mean, a vibrator, to apply the cream moisturizer containing suspended alumina microcrystals in the absence of a factual showing to the contrary or a showing of criticality with regard to the composition and/or the vibrator.

3.

Crystal Mall 1 Facsimile Center

A facsimile center has been established in Crystal Mall 1, room 7C10. The hours of operation are Monday through Friday, 8:45 AM to 4:45 PM. The telecopier number for accessing the facsimile machine is (703) 308-4556. The new location should be used in all instances when faxing any correspondence to Group 1600. Use of the new Crystal Mall 1 center will facilitate rapid delivery of materials to the Group. The faxing of all papers must conform with the notice published in the Official Gazette, 1096 O.G. 30 (November 15, 1989).

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4. Any inquiry concerning this communication or earlier communication from the examiner should be directed to Michael A. Williamson whose telephone number is (703) 308-1235.



Michael A. Williamson
Patent Examiner
Group 1610

Williamson020225
February 25, 2002